

The Respondent's CASE.

1694. **T**HE Testator William Worts, and the Respondent (two of the Three Esq; Beadles of the University of Cambridge) being severally possessors of Wine Licenses, It was upon the Proposal of the Testator Worts, agreed between him, the Respondent and one Mr. Reynolds that they should become Partners together in carrying on a Joint-Trade in selling Wines with equal Profit and Loss, for which purpose they were to advance 700 l. a-piece for a Joint-Stock, and in pursuance of that Agreement, a Draught of Articles was made and approved of by them; But it being thought most proper to conceal this Partnership from the University, The Testator Worts was agreed to be the only Manager thereof, and the whole Trade was to be carried on in a Cellar in Cambridge at some distance from the Testator Worts's House.

25 March 1695. The Respondent accordingly called in 700 l. (which he had at Interest) and paid it as his Quota to the Testator Worts, who gave him a Note acknowledging the Receipt thereof, and thereby promising to be accountable for it; and the said Reynolds also paid in his 700 l. to Worts, and one Mr. Raphe, an Eminent Merchant in London, was by Consent of all the Three Partners apply'd to, and did at their Request, and on their Credit, from time to time furnish great Quantities of Wine, and sent down the same to the Testator Worts, the only acting Partner; who at Lady-Day 1695. begun to sell Wines in the said Partnership, and the Respondent only appeared to intermeddle so far as to recommend and put in a Servant to keep the Books, and Cash.

Nota. This way of Trading was much different from that of a Vintner, for here was nothing to be done but to deliver out Wine as it was sent for; so that the Accounts were short, and no difficulty in keeping them.

6 April 1696. An Account was made up and Sign'd by all the Three Partners, declaring that the Disbursements in the said Wine Trade then amounted to 4353 l. 19 s. 11 d. and the Receipts to 2106 l. 8 s. 4 d. but no notice was then taken of the Debts standing out, or of the Stock in the Cellar, nor was any Division then made, all the Partners resolving to continue the Trade in Partnership; which was managed accordingly until the Testator Worts's Death, in March 1703.

But it does now appear that in 1698. the Testator Worts did privately buy out the said Reynolds (when under some difficulty for want of Money) and obtained his Release.

The Testator Worts afterwards, viz. in the Years 1699, 1700, and 1701, paid to the Respondent diverse Sums on Account of the said Wine Trade, amounting to 875 l. And after the Payment of that Money, the said Testator Worts, upon taking a Journey to London, directed the Book-Keeper to deliver all the Books to the Respondent. And the very Summer next before his Death, upon his taking a second Journey, to Tunbridge, he directed the Book-Keeper to pay to the Respondent whatever Money he required.

1704. Soon after the Death of the Testator Worts (who had raised a very great Estate by the said Wine Trade) the Respondent applied to the Appellant, (who had possessed himself of the Joint-Stock,) for an Account; but the Appellant not complying with such Request, the Respondent was forc'd to exhibit his Bill in Chancery; to which the now Appellant put in his Answer, not admitting that ever there was any Partnership, but rather disowning it, and insinuating that the said 700 l. was not paid to his Father as the Respondent's Quota of the Stock, but as Money Lent; And upon such like Pretences the Appellant brought his Cross Bill, whereunto the Respondent put in his Answer; and thereby insisted that the 700 l. was paid on Account of the Partnership, and denied that 'twas Lent; with which the Appellant was so far satisfied, as not to proceed any further thereon, but suffer'd his said Cross Bill to be dismissed with full Costs.

2 May 1707. The Respondent's said Cause came to Hearing before the now Lord Chancellor, and upon great Debate and Reading the Draught of the Articles, the Stated Account, many Letters and Papers, and also the Proof his Lordship declared, that there appeared to be a Partnership, and that there was no Proof or Circumstance to shew that ever it was determined; therefore Decreed an Account of the Partnership and Stock, from the time Mr. Raphe first sent down Wines to the time of the said Worts's Death, and also of such Stock as was left at his Death; and the same was to be taken according to the Terms of the Draught of the said Articles; and if it should appear that the Respondent had receiv'd out of the Stock beyond his Share of the Produce, then he was to be taken as Debtor for so much, and to answer Interest for it, and what should appear due on such Account to the Respondent, for his Third Part was Decreed to be paid him by the Appellant who had admitted sufficient Assets.

19 August 1707. After this Decree the Appellant obtained an Order for a Rehearing, upon Suggestion. That he had then lately found an Account dated 10th Octob. 1697. Signed by the Respondent, with a Receipt in full of all Accounts; and the Cause was accordingly Reheard, on the 27th October last, and the former Decree confirmed.

From which Decree the Appellant hath Appeal'd to this Honourable House.

But 'tis humbly hoped, That there will appear no Colour to vary the same, For that there is a plain Proof of the Partnership by many credible Witnesses, and by the said Draught of Articles, Stated Account, and the Testator Worts's own Letters; and 'tis also plain that it continued till the Death of the Testator Worts, as betwixt him and the Respondent, and should it not be so understood, it would be very severe, since the Respondent was as answerable as the Testator Worts, to the said Wine Merchant for the whole time, and since the Respondent hath never had any Account of the Profit or Stock of the said Trade.

Object. I. It is Objected that if there was a Partnership it was waived by the Respondent soon after its Commencement, and did not Continue till the Testator Worts's Death, and that the Respondent did not demand any Account of the Testator Worts touching the said Joint-Trade.

Answer. There is no Proof that the said Partnership was ever waived by the Respondent; but on the contrary, the said several Payments made by the Testator Worts in 1699, 1700. and 1701, do make it Manifest, that the Partnership was then Subsisting, besides other sufficient Proof of its Continuance to the Testator Worts's Death.

Object. II. It is Objected that not only the Testator Worts; but also the Respondent did in their Discourses deny the Partnership.

Answer. No Inference ought to be drawn from thence against the Partnership, for that 'twas all along the Intent and Design of all the Partners to keep the Partnership Secret, as appears very clearly by the Proofs and by the Testator Worts's Letters.

Object. III. It is Objected that 'twill be impossible to take such an Account as is directed by the Decree; no regular Accounts having been kept by the Testator Worts.

Answer. If that were the Case the Respondent can have no benefit by the Decree, and consequently the Appellant has no reason to Complain of it: But however, the Appellant ought not to make such an Objection; much less ought he to Profit by the Default of his Testator, who kept all the Accounts of the Partnership, and 'tis by these very Accounts (and no other) that the Appellant is to be charged.

Wherefore the Respondent humbly prays that the said Appeal may be dismissed with Costs.

Rob. Raymond.